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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 269.

THE UNITED STATES, APPELLANT,

vs.

THE AMERICAN SUGAR REFINING COMPANY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 23, 1905.

(19770.)

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30485—05——1

1 At a stated term of the United States Circuit Court for the Southern District of New York, held in the United States court and post-office building in the city of New York, on the 13th day of May, A. D. 1904.

Present: Hon. E. Henry Lacombe, circuit judge.

In the matter of the application of the American Sugar Refining Company of New York for a review of the decision of the Board of the United States General Appraisers as to the rate, etc., of duty on certain merchandise imported by said company per steam-ships "Vigilancia" July 14 03, "Straits of Dover" June 23 03, "Matanzas" Aug. 12 03, "Pendleton" Aug. 1 03, "Mohican" July 28 03, "Tresco" Aug. 25 03, "Ulriken" July 9 03, "Curityba" Aug. 4 03, "Miramar" Aug. 5 03, "Massapequa" Aug. 14 03, "Seneca" Aug. 10 03, "Curityba" Sept. 29 03, "Falcon" Aug. 19 03, "Westgate" Aug. 17 03, "Olinda" Sept. 18 03, "Matanzas" Sept. 10 03, "Mexico" Sept. 2 03.

Upon reading and filing the petition herein and upon motion of Parsons, Closson & McIlvaine, attorneys for the petitioner, it is ordered that the Board of United States General Appraisers, sitting at the port
2 of New York, return to this court the record and evidence taken by them in the above matter, together with a certified statement of the facts involved and their decision thereon.

E. Henry Lacombe,
Circuit Judge.

United States Circuit Court for the Southern District of New York.

In the matter of the application of the American Sugar Refining Company of New York for a review of the decision of the Board of General Appraisers as to the rate and amount of duty on certain merchandise imported by said company, per steam-ships "Vigilancia" July 14 03, "Straits of Dover" June 22 03, "Matanzas" Aug. 12 03, "Pendleton" Aug. 1 03, "Mohican" July 28 03, "Tresco" Aug. 25 03, "Ulriken" July 9 03, "Curityba" Aug. 4 03, "Miramar" Aug. 5 03, "Massapequa" Aug. 14 03, "Seneca" Aug. 10 03, "Curityba" Sept. 29 03, "Falcon" Aug. 19 03, "Westgate" Aug. 17 03, "Olinda" Sept. 18 03, "Matanzas" Sept. 10 03, "Mexico" Sept. 2 03.

To the honorable the Circuit Court of the United States for the Southern District of New York.

Your petitioner, a corporation duly organized and existing under the laws of the State of New York, being dissatisfied with the decision
3 made on the 28th day of April, 1904, by the Board of General Appraisers (designated by the Secretary of the Treasury for and on duty at said port, pursuant to the act of Congress approved June 10, 1890, entitled "An act to simplify the laws in relation to collection of the revenue"), sustaining the decision of the collector of customs at the port of New York as to the construction of the law and the facts respecting the classification of certain merchandise, to wit, a certain sugar

imported per steamships "Vigilancia" July 14 03, "Straits of Dover" June 23 03, "Matanzas" Aug. 12 03, "Pendleton" Aug. 1 03, "Mohican" July 28 03, "Tresco" Aug. 25 03, "Ulriken" July 9 03, "Curityba" Aug. 4 03, "Miramar" Aug. 5 03, "Massapequa" Aug. 14 03, "Seneca" Aug. 10 03, "Curityba" Sept. 29 03, "Falcon" Aug. 17 03, "Olinda" Sept. 18 03, "Matanzas" Sept. 10 03, "Mexico" Sept. 2 03, and as to the rate of duty imposed thereon under such classification, such merchandise being owned and having been entered for consumption by your petitioner, respectfully makes application to the court for a review of the questions of law and fact involved in such decision, and hereby makes the following concise statement of the errors of law and fact complained of, to wit:

The said merchandise was classified and assessed for duty at the rates provided in section 209 of the tariff act of July 24, 1897, and the entries thereof were liquidated accordingly.

The said owner and importer being dissatisfied with the decision assessing duty as aforesaid gave notice within ten days after said liquidation of duty, setting forth the reasons of his objections thereto, claiming said merchandise to be dutiable on the basis provided in the reciprocity treaty between the United States and Cuba.

4 Whereupon the invoices and all papers and exhibits connected therewith were duly transmitted to the said Board of General Appraisers, which Board, proceeding to hear and determine the questions of law and fact involved, sustained the collector's said decision in the premises. The record of their decision to this effect appears in communications addressed to the collector of the port under date of April 28, 1904, copies of which are hereto attached and made part hereof.

And the errors of law and fact in the decision of said Board in this regard herein complained of your petitioner states:

1. That said Board were in error: In holding that the importations of the merchandise in question, or any of them, were made or the entries, or any of them, perfected prior to the time the reciprocity treaty went into effect between the United States and the Republic of Cuba.

2. In holding that the goods, or any of them, were dutiable at the rates provided for such merchandise under the tariff act of July 24, 1897, or that such was the law of the land at the time the importation, or any of them, were made.

3. In not holding that under the act of Congress approved December 17th, 1903, the treaty of reciprocity between the United States and Cuba went into effect on the 10th day after the exchange of the ratifications thereof, viz, on the 10th day of April, 1903.

For the foregoing reasons the decision of the Board in sustaining the action of the collector in assessing the full rates of duty upon said merchandise as provided in the tariff act of 1897 was illegal and void, and said merchandise should have been assessed at such rates subject to the reduction of twenty per centum as provided by the treaty of reciprocity between the United States and Cuba.

5 Accordingly your petitioner respectfully prays this court to order the said Board of General Appraisers to return to the court the record and evidence taken by the said Board, together with a certified statement of the facts involved in the case, and of their decision thereon,

and thereupon to proceed to review the said decision, and to determine the questions of law and fact involved in the same.

THE AMERICAN SUGAR REFINING COMPANY OF NEW YORK.
By ARTHUR DONNER, *Treasurer, Petitioner.*

PARSONS, CLOSSON & MCILVAINE,
Attorneys for Petitioner, 52 William street,
Borough of Manhattan, New York.

UNITED STATES GENERAL APPRAISERS,
New York, Apr. 28, '04.

In the matter of protests 100011, etc., of American Sugar Refining Company of New York against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (Waite, Somerville, and Hay, general app.).

Somerville, general appraiser: The importations in question consist of sugar, and were all made, and entries of the goods perfected, prior
6 to the time the reciprocity treaty went into effect between the United States and the Republic of Cuba. (Note treaty cited in T. D. 24836.) The claim is made in the protests that the importers are entitled to the reduced rates of duty on sugar provided in said treaty. The rule is well settled that, except as to statutes purely remedial, a retroactive operation will not be given to a statute unless it is manifest from its terms that such is the legislative intent. In re Bunker, G. A. 5555 (T. D. 24941), and cases cited; Chew Heong v. United States (112 U. S., 536; 5 Sup. Ct. Rep., 255). The goods were clearly dutiable at the rates provided for such merchandise under the tariff act of July 24, 1897, which was the law of the land at the time the importations were made. The protests are all overruled and the collector's decision affirmed in each instance.

(Endorsed:) U. S. Circuit Court. Filed May 13, 1904, Southern District, New York. John A. Shields, clerk.

7 United States Circuit Court for the Southern District of New York.

In the matter of the application of The American Sugar Refining Company of New York for a review of the decision of the Board of United States General Appraisers as to the rate, etc., of duty on certain merchandise imported by said company per steamships "Vigilancia," July 14 03, "Straits of Dover," June 23 03, "Matanzas," Aug. 12 03, "Pendleton," Aug. 1 03, "Mohican," July 28 03, "Tresco," Aug. 25 03, "Ulriken," July 9 03, "Curityba," Aug. 4 03, "Miramar," Aug. 5 03, Massapequa," Aug. 14 03, "Seneca," Aug. 10 03, "Curityba," Sept. 29 03, "Falcon," Aug. 19 03, "Westgate," Aug. 17 03, "Olinda," Sept. 18 03, "Matanzas," Sept. 10 03, "Mexico," Sept. 2 03.

Know all men by these presents that I, Henry C. Mott, of the borough of Brooklyn, city of New York, am held and firmly bound unto the United States of America in the sum of one hundred dollars ($100), to

be paid to the said United States of America, for the payment of which well and truly to be made, I bind myself, my heirs, executors, and administrators.

Sealed with my seal and dated the twenty-third day of May, 1904.

[SEAL.]

Wherefore the above-named The American Sugar Refining Company has applied or will apply to the Circuit Court of the United States
8 for the Southern District of New York for a review of the questions of law and fact involved in the decision of the Board of United States General Appraisers, at the port of New York, upon the entry of certain merchandise as above mentioned:

Now, therefore, the condition of this obligation is such that if the above-named applicant shall prosecute said matter, application, or proceeding to effect and pay all damages and costs if it fail to make said matter, application, or proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY C. MOTT.

Sealed and delivered and taken and acknowledged before me this 23rd day of May, 1904.

ALBERT S. WRIGHT,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, County of New York, ss:

On this 23rd day of May, 1904, before me personally appeared Henry C. Mott, to me known to be the individual who executed the above bond, and who, being duly sworn, deposes and says that he is a resident of the eastern district of New York, and that he is worth the sum of two hundred dollars ($200) over and above all his just debts and liabilities, and duly acknowledged that he executed the same.

[SEAL.]

ALBERT S. WRIGHT,
Notary Public, N. Y. Co.

(Endorsed:) U. S. Circuit Court. Filed May 23, 1904. Southern District New York. John A. Shields, clerk.

9 In the Circuit Court of the United States for the Southern District of New York.

John E. Dowsing, [seal] chief clerk Board of U. S. General Appraisers.

In the matter of the application of the Sugar Refining Co. for the review of a decision of the Board of U. S. General Appraisers as to the rate, etc., of duty on certain sugar imported in vessels and on dates named herein.

Suit No. 3543. Return of the Board of United States General Appraisers to the order of Hon. E. Henry Lacombe, circuit judge.
Dated New York, July 21, 1904.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter and of the facts involved therein as ascertained by them:

They state that letters were received from the collector of customs at New York, submitting, under the provisions of section 14 of the act of June 10, 1890, the protests described as follows:

Colls. No.	Board No.	Protestants.	Vessel.	Date of entry.
22188	100011	The American Sugar Refining Co.	Vigilancia.	July 14 03.
22193	100012	"	Strs. of Dover.	June 22 "
22726	100013	"	Matanzas.	Aug. 12 "
22880	100014	"	Pendleton.	Aug. 1 "
22892	100015	"	Mohican.	July 28 "
22894	100016	"	Tresco.	Aug. 25 "
22795	100088	"	Afriken.	July 9 "
23465	100089	"	Curityba.	Aug. 4 "
23982	100090	"	Miramar.	" 5 "
23884	101008	"	Seneca.	" 10 "
24245	101007	"	Massapequa.	" 14 "
24542	101331	"	Curityba.	Sept. 29 "
24677	102255	"	Falcon.	Aug. 19 "
25272	103307	"	Westgate.	" 17 "
26162	103608	"	Olinda.	Sept. 18 "
25821	103609	"	Matanzas.	" 10 "
26324	103610	"	Mexico.	" 3 "
24679	103615	"	Cienfuegos.	" 1 "
24771	103616	"	Vidar.	" 19 "
25274	103617	"	Tripoli.	Aug. 29 "
25819	103618	"	Jason.	Sep. 28 "
26138	103619	"	Frey.	" 9 "

A copy of the first of said letters and protest 100011 are annexed as Exhibits A & B, and the others are returned under a separate cover marked "Protests in suit = 3543."

On April 28th, 1904, the Board rendered a decision upon said protests. A copy of the opinion, known as G. A. 5665, is annexed as Exhibit C. For convenience of reference a copy of G. A. 5724 is also annexed as Exhibit D, in which the subject under consideration is further discussed.

11 EXHIBIT A.

(Copy.)

U. S. CUSTOMS SERVICE, PORT OF NEW YORK.
Nov. 19, 1903.

BOARD OF U. S. GEN. APPRAISERS,
Port of New York.

GENTLEMEN: I submit the protest =22188 * of the American Sugar Refining Co. against the assessment of duty as made by this office on certain sugar imported by it in the vessel named * * *.

Claim is made in protest =22188 * that the sugar, being the product of Cuba, is entitled to a reduction of twenty per centum of duties, as the

result of a treaty said to have been negotiated between the United States and Cuba. The protests are also intended as a notification or claim for any reduction of duties that may be made by Congress in the future on Cuban products imported into the United States. As Congress had not passed any measure tending to reduce the duties on products of Cuba when imported into the United States at the time that these importations were made, or prior to the liquidation of the entries, this office rejects the claim of the protests and affirms its assessment of duty. Note G. A. 5415.

(Sd.) J. J. COUCH,
Spec. Dep. Coll.

12

EXHIBIT B.

[Custom house Dept., The American Sugar Refining Company of New York. H. O. Havemeyer, president; Arthur Donner, treasurer; C. R. Heike, secretary. P. O. box 2036.]

117 WALL STREET,
New York, Oct. 20, 1903.

TO THE COLLECTOR OF CUSTOMS,
Port of New York.

SIR: We hereby protest against your decision as to the rate and amount of duty exacted by you on 22,000 packages of sugar imported per SS "Vizcannia" on the 11th day of July, 1903, entry No. 137249, for the reason following, to wit:

1. By the terms of a treaty, or commercial convention, entered into between the United States and the Republic of Cuba on the 11th day of December, 1902, the ratifications of which (as provided therein) were exchanged by the respective governments on or before the 31st day of January, 1903, to go into effect on the tenth day after said exchange of ratifications, it is provided that a reduction of twenty per centum of the duties now levied on imported sugars under the tariff act of 1897 shall be made upon all sugars imported from, and the product of, the Republic of Cuba.

2. For the further reason that a clause in said treaty stipulating that the same shall not take effect until approved by the Congress, is inoperative, and that when approved by the Congress it should be con-
13 strued as having taken effect not later than the 10th day after the exchange of the ratifications thereof.

3. Your action therefore, in assessing duty upon said sugar in accordance with the tariff act of 1897, is unlawful and unjust.

Respectfully,

THE AMERICAN SUGAR REFINING COMPANY OF NEW YORK.
W. DENISON, *Attorney.*

100011.
Liq. Oct. 15 03.
(Endorsed:) Custom-house, New York, Oct. 21, 1903. Received.

EXHIBIT C.

Pa. 6, Cuban sugar.

UNITED STATES GENERAL APPRAISERS,
New York, Apr. 28, 1894.

In the matter of protest 100011, etc., of The American Sugar Refining Co. of New York, against the assessment of duty by the collector of customs at the port of New York. Before Board No. 3. G. A. 5665.

Somerville, general appraiser:

The importations in question consist of sugar, and were all
14 made, and entries of the goods perfected, prior to the time the reciprocity treaty went into effect between the United States and the Republic of Cuba. Note treaty cited in T. D. 24836. The claim is made in the protests that the importers are entitled to the reduced rates of duty on sugar provided in said treaty. The rule is well settled that, except as to statutes purely remedial, a retroactive operation will not be given to a statute, unless it is manifest from its terms that such is the legislative intent. In re Bunker, G. A. 5555 (T. D. 24941), and cases there cited. Chew Heong v. U. S., 112 U. S., 536; 5 Sup. Ct. Rep., 255. The goods were clearly dutiable at the rates provided for such merchandise under the tariff act of July 24, 1897, which was the law of the land at the time the importations were made. The protests are all overruled, and the collector's decision affirmed in each instance.

(Sd.) BYRON S. WAITE,
H. M. SOMERVILLE,
EUGENE G. HAY.
Board of U. S. General Appraisers.

Schedule on page 2.

H.

EXHIBIT D.

(T. D. 25007—G. A. 5724.)

Cuban treaty.

1. The treaty or convention between the United States and the Republic of Cuba, fixing the rate of duty on certain imported merchandise, referred to in the proclamation of the President (T. D. 24836), did not take effect until the approval of the act by the Congress of the United States, which was on December 17, 1903.

2. Said convention can not be construed to have any retrospec-
15 tive operation, so as to apply to merchandise imported from Cuba into the United States prior to said date.

3. Whether the operation of said treaty was extended by the President's proclamation so as not to go into effect until December 27, 1903—Quære?

UNITED STATES GENERAL APPRAISERS,
New York, June 25, 1904.

In the matter of protests 106042, etc., of A. G. Hutcheson & Co., et al., against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (Waite, Somerville, and Hay, General Appraisers; signed by Lunt and Somerville, G. A.).

Somerville, General Appraiser:

These protests cover importations from the island of Cuba, which were assessed for duty under various paragraphs of the tariff act of 1897 at the rates of duty provided by said act. The importers claim the benefits of the treaty or convention between the United States and the Republic of Cuba, which was proclaimed by the President on December 17, 1903 (T. D. 24836).

The principal question presented for our decision is whether these importations are covered by the terms of said treaty, and this requires us to determine when the treaty actually went into effect. The goods to which the protests relate were all entered for consumption, and the entries were liquidated by the collector prior to December 17, 1903. Articles I and II of said treaty read as follows:

ARTICLE I.

16 During the term of this convention, all articles of merchandise being the product of the soil or industry of the United States, which are now imported into the Republic of Cuba free of duty, and all articles of merchandise being the product of the soil or industry of the Republic of Cuba which are now imported into the United States free of duty, shall continue to be so admitted by the respective countries free of duty.

ARTICLE II.

During the term of this convention all articles of merchandise not included in the foregoing Article I, and being the product of the soil or industry of the Republic of Cuba imported into the United States, shall be admitted at a reduction of twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted.

Article XI of said treaty, fixing the time when the same shall go into effect, reads as follows:

ARTICLE XI.

The present convention shall be ratified by the appropriate authorities of the respective countries, and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first day of January, 1903, and the convention shall go into effect on the tenth day after the exchange of ratifications, and shall continue in force for the term of five (5) years from date of

going into effect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same.

17 By a resolution of March 19, 1903, the Senate of the United States had added to said Article XI these words:

This convention shall not take effect until the same shall have been approved by the Congress.

On December 17, 1903, Congress gave its approval to said treaty by an act to carry its provisions into effect, which was entitled "An act to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two." The first section of said act provided, among other things, as follows:

Whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring that he has received such evidence, and thereupon on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba, and so long as the said convention shall remain in force, all articles of merchandise being the product of the soil or industry of the Republic of Cuba * * * and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States. * * *

The contention of the importers is that the provisions of the treaty went into effect on April 10, 1903, which was ten days after the exchange of ratifications, occurring March 31, 1903.

18 The usual rule is that where a treaty by its own terms fails to fix a time at which it is to go into effect it is considered as concluded and operative on the exchange of ratifications. Armstrong v. Bidwell (124 Fed. Rep., 690) and cases there cited; Ex parte Ortiz (Cir. Ct., 100 Fed. Rep., 962); Dooley v. United States (182 U. S., 222; 21 Sup. Ct. Rep., 762).

It is clearly competent, however, for the Senate and the President, as constituting the treaty-making power, to provide that a treaty shall not go into effect until a time fixed in the future. A familiar instance of the exercise of this power is found in the practice of putting reciprocity treaties into effect upon the issuance of a Presidential proclamation. Field v. Clark (143 U. S., 649; 12 Sup. Ct. Rep., 495). In the present instance, as we have said, the treaty itself provided that it should not go into effect "until the same shall have been approved by the Congress," and the act of Congress approving it was not passed until the 17th day of December.

Some difficulty arises from the apparent repugnancy of certain clauses contained in the act of Congress approving the treaty, which, in one aspect, seems from its own language to indicate that it shall not go into effect until the President has received and passed on the evidence required to be considered by him, and which must be satisfactory to him, showing

that the Republic of Cuba had made provision to give full effect to the articles of the convention. Nevertheless, it declares that "thereupon, on the tenth day after the exchange of ratifications of such convention," the reduction of the rates of duty provided for shall take effect. The treaty was actually ratified on March 31, 1903, almost nine months before the act of Congress was passed. We are, nevertheless, of
19 opinion that the provisions of the treaty could not take effect until the time fixed by the resolution of the Senate of March 19, 1903, which declared that "this convention shall not take effect until the same shall have been approved by the Congress." This has reference to futurity, and the language of the resolution, having become a part of the treaty, must speak for itself. This follows from the general rule, often declared by the courts, that a retrospective operation will never be given to a law unless required by express command or by necessary implication. Chew Heong v. United States (112 U. S., 536); Murray v. Gibson (15 How., 421); In re Bunker, G. A. 5555 (T. D. 24941).

The case of United States v. Burr (159 U. S., 78; 15 Sup. Ct. Rep., 1002) is an authority which would sustain the view we have above expressed. The question was as to the time when the tariff act of August 28, 1894, went into effect. The first section of that act provided that "on and after the first day of August, eighteen hundred and ninety-four" the rates of duty provided by said act should be levied on articles imported from foreign countries. The act did not, however, become a law until August 28, 1894. It was, nevertheless, held by the court that the act had no retrospective operation and could not go into effect until August 28, 1894. This decision affirmed that made by the Board, In re Wolff et al., G. A. 2775 (T. D. 15381), and reversed the decision of the Circuit Court (66 Fed. Rep., 742).

The following language was used by Chief Justice Fuller, speaking for the court:

The contention is that the language of that section being free from all obscurity and ambiguity, there is no room for construction, and that the court is imperatively required to conclude that it was the inten-
20 tion of Congress that the act should have a retrospective operation as of August 1, 1894, although it did not become a law until after that date. It is conceded that the general rule is, as stated in United States v. Heth (3 Cranch, 398, 413), that "words in a statute ought not to have a retrospective application unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature can not be otherwise satisfied;" and that the usual course in tariff legislation has been, inasmuch as some time is necessary to enable importers and business men to act understandingly, to fix a future date at which the statutes are to become operative. The question is not one of construction, but of intention as to the operative effect of this act, because of the existence of the particular date in section 1.

* * * * * * *

Moreover, in arriving at the true intention of Congress we can not treat section 1 as if it constituted the entire act, but must deduce the intention from a view of the whole statute and from the material parts of it.

Justice Fuller further observed:

The language of section 1 was that on and after the 1st of August there "shall" be levied; and of the second section that on and after the 1st day of August certain enumerated articles, when imported, "shall" be exempt from duty. In our judgment the word "shall" spoke for the future, and was not intended to apply to transactions completed when the act became a law.

We are of opinion that the protests are not well taken, the goods having all been imported prior to the passage of the act of Congress approving the treaty. It is unnecessary to determine whether the treaty

21 took effect on the 17th day of December, the day of the passage of the act, or ten days thereafter, as declared in the proclamation of the President. We merely decide that it did not take effect prior to its approval by Congress, leaving the other point open for future consideration.

The protests are overruled and the decision of the collector affirmed.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other exhibits hereto attached.

B. S. WAITE,
H. M. SOMERVILLE,
EUGENE G. HAY,
Board of U. S. Appraisers.

(Endorsed:) U. S. Circuit Court. Filed Jul. 22, 1904. Southern District of New York. John A. Shields, clerk.

22 United States Circuit Court, Southern District of New York.

AMERICAN SUGAR REFINING CO., *vs.* UNITED STATES. } No. 3543.

WHEELER, J.

The convention for the reduction of 20% of the duties on Cuban products provided for exchange of ratification before January 31, 1903, which was extended two months; and for going into effect on the tenth day after the exchange of ratifications. On the 19th of March the Senate added to that article:

"This convention shall not take effect until approved by the Congress."

Ratifications were exchanged March 31, 1903. These importations of Cuban products were made between July 14 and September 9; duties were assessed without reduction, against which protests were made before or on October 21, 1903, and were submitted to the Board of General Appraisers. On December 17, 1903, Congress passed "An act to carry into effect" the convention, which provided that whenever the President shall receive satisfactory evidence that Cuba has made provision to give full effect to the convention, he was authorized to issue his proclamation

declaring that he had received such evidence, "and thereupon on the tenth day after exchange of ratifications of such convention between the United States and the Republic of Cuba, and so long as the said convention shall remain in force, all articles of merchandise being the product of the soil of industry of the Republic of Cuba * * * shall
23 be admitted at a reduction of twenty per cent of the rates of duty thereon." The President immediately made such proclamation. The Board overruled the protests April 28, 1904, and confirmed the assessment without reduction. From that decision this review is brought.

When the collector assessed the duty there was no law in force relating to it but the general tariff law, and his assessment was clearly right; but if the assessment of duties is going on until the Board is done with it, which seems to be the case, the question now is whether the decision of the Board was right, according to the law of the subject, when that decision was made.

If the President and Senate could fix duties by treaty without the concurrence of the Congress they did not attempt to in this matter. While it was open its taking effect was fixed upon the approval of the Congress, and it derives its force from the act of Congress. No question is understood to be made, and there seems to be no doubt but that Congress may well provide for the liquidation of duties at a different rate on goods imported before, and especially by reduction, which would be the disposing of what, for the relief of the importers, would be entirely within the power of Congress. (Stockdale vs. Insurance Co., 20 Wall., 323.) So far as the treaty went it was made very plain that the reduction was to commence on the tenth day after the exchange of ratifications. Congress did not leave the subject open to any construction by using any other expression, but took the same and thereby enacted of itself that "on the tenth day after exchange of ratifications * * * and so long as said convention shall remain in force all articles of merchandise being the product of the soil or industry of the Republic of Cuba * * *
shall be admitted at reduction of the rates of duty thereon."
24 Merchandise is being admitted for tariff purposes until the duties are finally liquidated, which as to this merchandise was not till after that act of Congress was passed. These views do not seem to be contrary to U. S. vs. Burr (159 U. S., 78). The intention of Congress appears to have been sought for there, and ascertained from other parts of the act than the one date left to stand after it had gone by; but here there are no such other provisions to control. This act affirms the treaty as it was made with this date in it and enacts the date itself in the same terms. The intention to relieve Cuban imports from that date seems clear.

Decision reversed.

H. B. Closson, *for plaintiff.*
Henry A. Wise, *Asst. U. S. Attorney, for United States.*

(Endorsed:) Circuit Court of the United States for the Southern District of New York. American Sugar Refining Co. vs. United States. Opinion, Wheeler, J. U. S. Circuit Court, Southern District of New York. Filed Mar. 10, 1905. John A. Shields, clerk.

25 At a stated term of the Circuit Court of the United States of America, for the Southern District of New York, held at the United States Circuit Court rooms in the post-office building in the city of New York, on the 22nd day of March, 1905.

Present: Hon. Hoyt H. Wheeler, judge.

In the matter of the application of The American Sugar Refining Company of New York, for a review of the decision of the Board of United States General Appraisers as to the rate and amount of duty on certain merchandise imported by said company per steamships "Vigilancia," July 14–03; "Straits of Dover," June 22–03; "Matanzas," Aug. 12–03; "Pendleton," Aug. 1–03; "Mohican," July 28–03; "Tresco," Aug. 25–03; "Ulriken," July 9–03; "Curityba," Aug. 4–03; "Miramar," Aug. 5–03; "Massapequa," Aug. 14–03; "Seneca," Aug. 10–03; "Curityba," Sept. 29–03; "Falcon," Aug. 19–03; "Westgate," Aug. 17–03; "Olinda," Sept. 18–03; "Matanzas," Sept. 10–03; "Mexico," Sept. 2–03.

The above cause having come on for hearing and determination before this court on the application of the American Sugar Refining Company of New York, importers, for a review of the questions of law and fact involved in the decisions of the Board of United States General Appraisers herein, and on the return of the said Board of General Appraisers of the record and evidence taken by them with their certified statement of the facts involved therein, together with their decision thereon;

Now, after hearing Henry A. Wise, assistant United States attorney, for affirmance, and Henry B. Closson, of counsel for the said importers, for reversal, it is, upon motion of Parsons, Closson & McIlvaine, attorneys for the said importers.

26 Ordered, adjudged, and decreed that there was error in the said proceedings before said Board of General Appraisers, and that their decisions herein be, and the same hereby are, in all things reversed.

HOYT H. WHEELER, *Judge.*

Approved as to form:

PARSONS, CLOSSON & MCILVAINE,
Attys. for Importers.

HENRY L. BURNETT,
U. S. Attorney.

(Endorsed:) U. S. Circuit Court for the Southern District of New York. In the matter of the application of The American Sugar Refining Company of New York, for a review of the decision of the Board of United States General Appraisers as to the rate, etc., on merchandise imported per "Vigilancia," etc. Judgment of reversal. Parsons, Closson & McIlvaine, attorneys for importers, 52 William street, New York City. U. S. Circuit Court, Southern District of New York. Filed Mar. 22, 1905. John A. Shields, clerk.

27 United States Circuit Court, Southern District of New York.

THE AMERICAN SUGAR REFINING COMPANY of New York
vs.
THE UNITED STATES OF AMERICA.

To the United States Circuit Court, Southern District of New York:

The Attorney-General of the United States hereby applies for the allowance of an appeal to the Supreme Court of the United States from the decision and judgment of the U. S. Circuit Court entered herein on the 22nd day of March, 1905.

Dated April 17th, 1905.

W. H. MOODY,
Attorney-General,
Per HENRY L. BURNETT,
U. S. Attorney.

The foregoing application is granted and appeal allowed.

Dated New York, April 17th, 1905.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court, Southern District of New York.

(Endorsed:) U. S. Circuit Court, Southern District of New York. The United States of America, appellant, vs. The American Sugar Refining Company of New York, appellee. Application for and allowance of appeal. Henry L. Burnett, U. S. attorney. To Parsons, Closson & McElvaine, esqs., 52 William st., N. Y. City, attorneys for appellee. Copy received. Parsons, Closson & McElvaine, attorneys for appellees. U. S. Circuit Court, Southern District of New York. Filed Apr. 19, 1905. John A. Shields, clerk.

28 In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
vs.
THE AMERICAN SUGAR REFINING COMPANY of New York, appellee.

The United States Circuit Court for the Southern District of New York, which entered the decree reversing the decision of the Board of United States General Appraisers herein, erred as follows:

I. The Circuit Court erred in reversing the decision of the Board of General Appraisers therein.

II. The Circuit Court erred in not affirming the decision of the said Board.

III. The Circuit Court erred in substantially holding that by the terms of the treaty or commercial convention, signed by the representatives of the United States and the Republic of Cuba on the 11th day of December, 1902, said treaty or commercial convention became operative and went into effect on the 10th day of April, 1903.

IV. The Circuit Court erred in substantially holding that the resolution of the United States Senate, on March 19, 1903, which referred to

said treaty or commercial convention, and was in the following language, to wit, "this convention shall not take effect until approved by the Congress," did not alter or repeal the following provision in said treaty, to wit, "the present convention shall be ratified by the appropriate authorities of the respective countries and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first day of January,
29 1903, and the convention shall go into effect on the tenth day after the exchange of ratifications, * * *."

V. In that the Circuit Court erred in substantially holding that said treaty, or convention, when approved by the Congress, December 17th, 1903, took effect and became operative as of the 10th day of April, 1903.

VI. In that the Circuit Court erred in substantially holding that the protest of the importer which was filed in October, 1902, when said treaty or convention had not received the approval of the Senate of the United States, and had not been approved by the Congress, was a valid protest.

VII. The Circuit Court erred in substantially holding that an importer may protest against a valid assessment of duties made pursuant to a then existing law, and avail himself by such protest of some subsequently enacted law to the contrary.

VIII. The Circuit Court erred in substantially holding that the act of Congress, December 17th, 1903, entitled "An act to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two," was retroactive and provided for a reduction in the rates on all merchandise imported from Cuba subsequent to April 10th, 1903.

IX. The Circuit Court erred in substantially holding that at the time of the liquidation and assessment of duties upon the merchandise in question by the collector of the port of New York that the tariff act of July 24th, 1897, relating to such merchandise, had been repealed or modified in any manner.

X. The Circuit Court erred in not holding that at the time of the assessment and liquidation of duties upon the merchandise in question the tariff act of July 24th, 1897, was the only law relating to
30 assessment of duties upon such merchandise, and such assessment and liquidation was final and conclusive.

XI. The Circuit Court erred in not holding that the protest of the importer against the assessment and liquidation of duties upon the merchandise in question was insufficient, in that it did not point out any then existing law under which said importers claimed such merchandise should be taxed.

XII. The Circuit Court erred in not holding that no treaty or convention can be made between the United States and any other country without the consent and approval of the Senate, and that the consent and approval of the United States Senate to the said treaty, between the United States and Cuba, was a conditional consent and approval dependent upon the approval by the Congress of said treaty.

XIII. The Circuit Court erred in not holding that the approval of said treaty by the Senate, attached thereto on the 17th day of December,

1903, and that until then said treaty or convention had been of no force or virtue.

XIV. The Circuit Court erred in not holding that the act of Congress of December 17th, 1903, approving said treaty or convention, could not and did not alter or vary the approval of said treaty or convention by the Senate, and that said approval by said Senate was not retroactive or retrospective, but gave force to and put said treaty or convention into effect upon the said 17th day of December, 1903.

XV. The Circuit Court erred in not holding that said treaty or convention did not take effect until the 17th day of December, 1903.

XVI. The Circuit Court erred in not holding that said treaty had no retrospective operation.

31 In order that the foregoing assignment of errors may be and appear of record, the United States presents the same to the court, and prays that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided, and the United States prays a reversal of the decretal order and decree of reversal made and entered by said court.

Dated New York, April 17th, 1905.

HENRY L. BURNETT,
United States Attorney for the Southern District of New York.

(Endorsed:) U. S. Supreme Court. The United States, appellant, vs. The American Sugar Refining Co. of New York, appellee. Assignment of errors. Henry L. Burnett, United States attorney, attorney for U. S. U. S. Circuit Court, Southern District of New York. Filed Apr. 17, 1905. John A. Shields, clerk.

32 UNITED STATES OF AMERICA, *ss*:

To the American Sugar Refining Company of New York:

You are hereby cited and admonished to be and appear before the United States Supreme Court at the city of Washington, on the 15th day of May, 1905, pursuant to an appeal on the part of the United States filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, in a certain suit or proceeding entitled "The United States of America, appellant, vs. The American Sugar Refining Company of New York, appellee," to show cause, if any there be, why the decision of the U. S. Circuit Court in the said appeal mentioned should not be reversed, modified, or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, in the Southern District of New York, on the 17th day of April, 1905.

E. H. LACOMBE,
Judge of the U. S. Circuit Court,
Southern District of New York.

HENRY L. BURNETT,
U. S. Attorney, on behalf of the United States, appellant.

(Endorsed:) U. S. Supreme Court. The United States of America, appellant, vs. The American Sugar Refining Company of New York,

appellee. Citation. Henry L. Burnett, U. S. attorney. To Parsons, Closson & McElvaine, esqs., attorneys for appellee, 52 William st., N. Y. City. Copy received, Parsons, Closson & McElvaine, April 19, 1905. U. S. Circuit Court, Southern District of New York. Filed Apr. 19, 1905. John A. Shields, clerk.

33 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to thirty-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled "The United States of America, appellant, against The American Sugar Refining Company of New York, appellee," as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 22nd day of May, in the year of our Lord one thousand nine hundred and five, and of the Independence of the said United States the one hundred and twenty-ninth.

[SEAL.] JOHN A. SHIELDS,
Clerk.

34 (Indorsed:) United States Supreme Court. The United States of America, appellants, vs. The American Sugar Refining Co., appellee. (No. 3543.) Transcript of record from the Circuit Court of the United States for the Southern District of New York. Office of the clerk Supreme Court U. S. Received May 23, 1905.

(Indorsement on cover:) File No. 19770. S. New York, C. C. U. S. Term No. 269. The United States, appellant, vs. The American Sugar Refining Company of New York. Filed May 23d, 1905. File No. 19770.

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